United Nations A/CN.4/L.923

General Assembly

Distr.: Limited
31 July 2018

Original: English

International Law Commission
Seventieth Session
New York, 30 April–1 June, and Geneva, 2 July–10 August 2018

Draft report of the International Law Commission on the work of its seventieth session

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Chapter X
Succession of States in respect of State responsibility

Contents

Page

A. Introduction .....
B. Consideration of the topic at the present session .....
1. Introduction by the Special Rapporteur of the second report .....
2. Summary of the debate .....
(a) General comments .....
(b) Specific comments .....
(c) Final form .....
(d) Future programme of work .....
3. Concluding remarks of the Special Rapporteur .....

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Chapter X
Succession of States in respect of State responsibility

A. Introduction

1. At its sixty-ninth session (2017), the Commission decided to include the topic "Succession of States in respect of State responsibility" in its programme of work and appointed Mr. Pavel Šturma as Special Rapporteur.[1] The General Assembly subsequently, in its resolution 72/116 of 7 December 2017, took note of the decision of the Commission to include the topic in its programme of work.

2. At the same session, the Commission considered the first report of the Special Rapporteur (A/CN.4/708), which sought to set out the Special Rapporteur's approach to the scope and outcome of the topic, as well as to provide an overview of general provisions relating to the topic. Following the debate in plenary, the Commission decided to refer draft articles 1 to 4, as contained in the first report of the Special Rapporteur, to the Drafting Committee on the understanding that draft articles 3 and 4 would be left pending in the Drafting Committee. The Commission subsequently took note of the interim report of the Chairperson of the Drafting Committee regarding draft articles 1 and 2, provisionally adopted by the Committee, which was presented to the Commission for information only.[2]

B. Consideration of the topic at the present session

3. At the present session, the Commission had before it the second report of the Special Rapporteur (A/CN.4/719), which was considered at its 3431st to 3435th meetings, from 17 to 24 July 2018.

4. In his second report, which was composed of four parts, the Special Rapporteur at first addressed certain introductory issues, including the legality of succession (Part One). He then discussed the general rules on succession of States in respect of State responsibility, particularly in relation to attribution and in relation to the difference between continuing and completed breaches (Part Two). Thereafter, the Special Rapporteur considered certain special categories of State succession to the obligations arising from responsibility (Part Three). The future programme of work on the topic was then addressed (Part Four). The Special Rapporteur proposed seven draft articles corresponding to the issues considered in Part One (draft article 5), Part Two (draft article 6), and Part Three (draft articles 7 to 11) of his second report.[3]

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[1] At its 3354th meeting, on 9 May 2017. The topic had been included in the long-term programme of work of the Commission during its sixty-eighth session (2016), on the basis of the proposal contained in annex B to the report of the Commission (*Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10)).

[2] The interim report of the Chairperson of the Drafting Committee is available on the website of the Commission at http://legal.un.org/ilc.

[3] The text of draft articles 5 to 11, as proposed by the Special Rapporteur in his second report, reads as follows:

Draft article 5
Cases of succession of States covered by the present draft articles

The present draft articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

Draft article 6
General rule

1. Succession of States has no impact on the attribution of the internationally wrongful act committed before the date of succession of States.

2. If the predecessor State continues to exist, the injured State or subject may, even after the date of succession, invoke the responsibility of the predecessor State and claim from it a reparation for the damage caused by such internationally wrongful act.

3. This rule is without prejudice to the possible attribution of the internationally wrongful act to the successor State on the basis of the breach of an international obligation by an act having a continuing character if it is bound by the obligation.

4. Notwithstanding the provisions of paragraphs 1 and 2, the injured State or subject may claim reparation for the damage caused by an internationally wrongful act of the predecessor State also or solely from the successor State or States, as provided in the following draft articles.

Draft article 7
Separation of parts of a State (secession)

1. Subject to the exceptions referred to in paragraphs 2 and 3, the obligations arising from an internationally wrongful act of the predecessor State do not pass to the successor State in case of secession of a part or parts of the territory of a State to form one or more States, if the predecessor State continues to exist.

2. If particular circumstances so require, the obligations arising from an internationally wrongful act of the predecessor State will transfer to the successor State when the act was carried out by an organ of a territorial unit of the predecessor that has later become an organ of the successor State.

3. If particular circumstances so require, the obligations arising from an internationally wrongful act of the predecessor State, where there is a direct link between the act or its consequences and the territory of the successor State or States, are assumed by the predecessor and the successor State or States.

4. The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a predecessor State or in a territory under its administration shall be considered an act of the new State under international law.

Draft article 8
Newly independent States

1. Subject to the exceptions referred to in paragraph 2, the obligations arising from an internationally wrongful act of the predecessor State do not pass to the successor State in case of establishment of a newly independent State.

2. If the newly independent State agrees, the obligations arising from an internationally wrongful act of the predecessor State may transfer to the successor State. The particular circumstances may be taken into consideration where there is a direct link between the act or its consequences and the territory of the successor State and where the former dependent territory had substantive autonomy.

3. The conduct of a national liberation or other movement which succeeds in establishing a newly independent State shall be considered an act of the new State under international law.

Draft article 9
Transfer of part of the territory of a State

1. Subject to the exceptions referred to in paragraphs 2 and 3, the obligations arising from an internationally wrongful act of the predecessor State do not pass to the successor State when part of the territory of the predecessor State becomes part of the territory of the successor State.

2. If particular circumstances so require, the obligations arising from an internationally wrongful act of the predecessor State will transfer to the successor State when the act was carried out by an organ of a territorial unit of the predecessor that has later become an organ of the successor State.

3. If particular circumstances so require, the obligations arising from an internationally wrongful act of the predecessor State, where there is a direct link between the act or its consequences and the territory of the successor State or States, are assumed by the predecessor and the successor State.

Draft article 10
Uniting of States

1. When two or more States unite and form a new successor State, the obligations arising from an internationally wrongful act of any predecessor State pass to the successor State.

2. When a State is incorporated into another existing State and ceased to exist, the obligations from an internationally wrongful act of the predecessor State pass to the successor State.

3. Paragraphs 1 and 2 apply unless the States concerned, including an injured State, otherwise agree.

5. At its 3435th meeting, on 24 July 2018, the Commission decided to refer draft articles 5 to 11, as contained in the Special Rapporteur's second report, to the Drafting Committee, taking into account the views expressed in the plenary debate.

6. At its …th meeting, on … August 2018, the Chairperson of the Drafting Committee presented an interim oral report on draft article 1, paragraph 2, and draft articles 5 and 6, provisionally adopted by the Drafting Committee. The report was presented for information only and is available on the website of the Commission.[4]

1. Introduction by the Special Rapporteur of the second report

7. The Special Rapporteur indicated that his second report took into account the comments from members of the Commission and from delegates in the Sixth Committee. In relation to the general rule underlying the topic of succession to responsibility, the Special Rapporteur considered that a general theory of non-succession should not be replaced by another similar theory in favour of succession: a more flexible and realistic approach was needed. While consistency with the previous work of the Commission was important, especially in relation to terminology, it was unnecessary to adopt the same structure as the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983. The previous work of the Commission on State responsibility for internationally wrongful acts was equally essential.

8. In that regard, the Special Rapporteur remarked that the complex legal regime of State responsibility had already been codified by the Commission in its articles on responsibility of States for internationally wrongful acts,[5] which largely reflected customary international law. The general principles and rules arising therefrom should thus be applied or developed, if necessary, to serve as guidance for States facing problems of responsibility in cases of succession. The question of succession had to be considered not with respect to "responsibility" *in abstracto* but rather with respect to the principles and rules of a secondary character governing, in particular: the establishment of an internationally wrongful act and its attribution to a given State; the content and forms of responsibility; and the invocation of such responsibility. Any general rules identified would then be subject to exceptions and modifications, taking into account various factors, such as whether the breach was completed or continuing, whether damage was localized, and whether the predecessor State continued to exist or not. The latter issue was especially significant, in the view of the Special Rapporteur.

9. Seven new draft articles had been proposed by the Special Rapporteur in his second report. In addition to addressing certain general rules (draft arts. 5 and 6), the draft articles focused on the transfer of obligations arising from the internationally wrongful act of the predecessor State (draft arts. 7 to 11). Draft article 5 dealt with the issue of legality of succession, providing that the draft articles applied only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations. The Special Rapporteur had initially been hesitant to address such a potentially controversial issue, given that, in addition to clear cases of illegal succession, there were also cases which belonged to a

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Draft article 11
Dissolution of State

1. When a State dissolves and ceases to exist and the parts of its territory form two or more successor States, the obligations arising from the commission of an internationally wrongful act of the predecessor State pass, subject to an agreement, to one, several or all the successor States.

2. Successor States should negotiate in good faith with the injured State and among themselves in order to settle the consequences of the internationally wrongful act of the predecessor State. They should take into consideration a territorial link, an equitable proportion and other relevant factors.

[4] http://legal.un.org/ilc.

[5] General Assembly resolution 56/83 of 12 December 2001, annex. The draft articles adopted by the Commission and the commentaries thereto are reproduced in *Yearbook … 2001*, vol. II (Part Two) and corrigendum, paras. 76–77.

"grey" or "neutral" zone which was possibly not governed by international law. Draft article 5 was therefore a modest provision modelled on article 6 of the Vienna Convention on Succession of States in Respect of Treaties of 1978, and consistent with other provisions previously adopted by the Commission, as well as with the work undertaken by the Institute of International Law.

10. The second general provision was draft article 6, which set out the general rule applicable to the succession of States in respect of State responsibility, namely the principle of non-succession when it comes to the establishment of an internationally wrongful act. The draft article provided that succession of States had no impact on the attribution of an internationally wrongful act committed before the date of succession of States. It then addressed the possible impact on succession to responsibility of the distinction between instantaneous and continuing breaches, as well the issue of composite acts.

11. The five draft articles that followed draft article 6 developed and modified the general rule expressed therein. They considered individual categories of succession and specified the circumstances where the obligations arising from an internationally wrongful act rested with the predecessor State and those where they passed to the successor State. The five draft articles were divided in two groups. Draft articles 7, 8 and 9 dealt with cases of succession where the predecessor State continued to exist, while draft articles 10 and 11 dealt with situations where the predecessor State had ceased to exist.

12. Draft articles 7, 8 and 9 addressed respectively the separation of parts of a State, the establishment of a newly independent State, and the transfer of part of the territory of a State. They were similarly structured. First, they expressed the general rule that obligations arising from an internationally wrongful act of the predecessor State did not pass to the successor State; then, they identified exceptions that applied in particular circumstances, such as a direct link between the act or its consequences and the territory of the successor State or States. Draft articles 7 and 9 also addressed the possibility of an act carried out by an organ of a territorial unit of the predecessor State that had later become an organ of the successor State.

13. Draft article 10 dealt with the two situations of merger of States and incorporation of a State into another existing State, while draft article 11 addressed the dissolution of State. The latter draft article underlined the role of agreements that should be negotiated in good faith by successor States.

14. The Special Rapporteur indicated that the final wording and placement of draft articles 3 and 4, as proposed on the first report and referred to the Drafting Committee, may be left for discussion at a later stage. In relation to the future programme of work, the Special Rapporteur reiterated his intention of following the programme outlined in his first report (A/CN.4/708, para. 133) with the necessary flexibility. The issue of forms and invocation of reparation might require further analysis in the future, and some additional definitions might be included in draft article 2 on the use of terms. In principle, the third report (2019) would focus on the transfer of the rights or claims of an injured predecessor State to the successor State. The fourth report (2020) would then address procedural and miscellaneous issues, including the plurality of successor States and the issue of shared responsibility, as well as issues concerning injured international organizations and injured individuals. The Special Rapporteur envisaged that the entire set of draft articles might be adopted on first reading in 2020 or 2021, depending on the progress of the debate.

2. Summary of the debate

(a) General comments

15. Members generally welcomed the second report of the Special Rapporteur and commended its structure. Several members remarked that the scarcity of State practice on succession of States in respect of State responsibility presented significant challenges to the work of the Commission on the topic. Some members agreed with the Special Rapporteur that the available State practice was diverse, context-specific and often politically sensitive, and observed that not many relevant decisions by domestic and international courts and tribunals were available. According to a number of members, such difficulties confirmed

the initial misgivings expressed by some members as to the suitability of the topic for codification or progressive development. Several members expressed caution at the heavy reliance of the report of the Special Rapporteur on academic writings and on the work of the Institute of International Law. In addition, it was noted that the practice considered in the report, although generally more diverse than in his first report, had still predominantly focused on European sources and examples.

16. Several members agreed with the Special Rapporteur that it was possible to identify an underlying general rule applicable to the succession of States in respect of State responsibility, according to which State responsibility did not automatically transfer to the successor State, except in certain circumstances. It was underlined that a realistic and flexible approach was needed in that regard, as the Special Rapporteur had remarked. Other members of the Commission expressed the view that identifying several rules would be more practical than attempting to confirm the existence of a single underlying general rule, which could be impossible to determine.

17. The scope of possible exceptions to the underlying general rule of non-succession was the object of considerable debate. Several members cautioned against replacing a general theory of non-succession to State responsibility with a similarly general presumption of succession. It was noted that some of the draft articles proposed by the Special Rapporteur in fact espoused such a presumption of succession, especially in relation to cases where the predecessor State no longer existed. In the view of several members, such proposals were based on policy grounds rather than State practice, and were more in the nature of progressive development, if not *de lege ferenda*, rather than codification of existing international law. In that respect, it was highlighted that it was important to clarify the extent to which each of the draft articles would constitute progressive development or codification of international law.

18. In relation to the methodology adopted by the Special Rapporteur, some members expressed doubts as to the separation of the issues of succession to obligations arising from an internationally wrongful act of a predecessor State (considered in the second report) from the issues concerning the rights and claims arising from an internationally wrongful act injuring a predecessor State (to be considered in the third report). In their view, that might lead to unnecessary duplication of work. In relation to the categories of succession to be analysed, a number of members agreed with the basic distinction proposed by the Special Rapporteur between cases where the predecessor State continued to exist and cases where it did not. Other members, however, suggested that such a distinction was not necessarily borne out by State practice, but was rather the result of policy considerations. Members also generally agreed that it was important to maintain consistency with the previous work of the Commission, both in matters of terminology and substance, especially in relation to the articles on responsibility of States for internationally wrongful acts.

19. In relation to the subsidiary nature of the proposed rules, a number of members proposed that a draft article be added stating that the draft articles would only apply in the absence of any agreement between the parties, including the injured State of an internationally wrongful act. In that regard, the fundamental role of treaties, other agreements, and unilateral undertakings by successor States was underlined by some members. The view was also expressed that caution was required in inferring general rules from existing agreements, which were often narrow in scope and only bound the parties thereto. According to a view, the Commission should focus its work solely on the responsibility of States for internationally wrongful acts whose injured parties were also States.

20. Some members proposed changing the title of the topic to "State responsibility problems in cases of succession of States". Suggestions were also made as to the possible structuring of the draft articles in several parts.

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(b) Specific comments

(i) Draft article 5 — Cases of succession of States covered by the present draft articles

21. Members generally expressed their support for draft article 5, the wording of which was consistent with the previous work of the Commission. It was noted that the draft article was also consistent with the fundamental principle *ex injuria jus non oritur* and with General Assembly resolution 2625 (XXV) of 1970 (Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations). In relation to the legality of succession, some members remarked that no third category existed beyond lawful and unlawful cases of succession. Other members considered that the question of legality of succession should be considered separately from the possible consequences, in terms of responsibility, of unlawful succession, including in relation to any unlawful territorial changes occurring before it. The view was also expressed that draft article 5 might not accomplish its intended purpose, because the exclusion of unlawful succession from the scope of application of the draft articles might lead to a paradoxical advantage for unlawful successor States, insofar as any identified exceptions to the general rule of non-succession to State responsibility may not be understood as applying to them.

(ii) Draft article 6 — General rule

22. While members generally expressed agreement with the rule of non-succession to State responsibility enshrined in draft article 6, several members remarked that the formulation of that draft article was unclear. A number of drafting suggestions were made in that regard, which *inter alia* aimed at clarifying that the responsibility for wrongful acts in cases of succession of States only arose for the State that had committed the wrongful act, except when the draft articles otherwise provided.

23. In relation to the legal basis of the general rule of non-succession, some members expressed support for the view of the Special Rapporteur that such a rule derived from the rules on attribution of conduct enshrined in the articles on responsibility of States for internationally wrongful acts, and in particular that the non-succession rule was a corollary to the definition of State responsibility contained in article 1 thereof. Other members, however, considered that the question of attribution of conduct was distinct from the question of succession to responsibility, and that employing the language of attribution of conduct might generate confusion, because issues of succession in respect to State responsibility only arose in relation to internationally wrongful acts that had already been attributed to the predecessor State under article 2 of the articles on responsibility of States for internationally wrongful acts; in the absence of such attribution, there would be no responsibility to transfer. The view was also expressed that the general rules on attribution of conduct and other rules on State responsibility may in fact be affected by rules on State succession.

24. In relation to paragraph 4 of draft article 6, some members considered that its reference to "reparation" would limit the scope of the draft articles only to certain aspects of State responsibility; it was therefore necessary to clarify the extent of the obligations arising from an internationally wrongful act that would be transferred in cases of succession in respect to responsibility. Other members considered that paragraph 4 undermined the general rule of non-succession enshrined in the first part of draft article 6, and that it conflicted with the general principle of law that only the wrongdoer should be held responsible for a wrongful act.

(iii) Draft article 7 — Separation of parts of a State (secession)

25. The suggestion was made by several members of the Commission to expunge from draft article 7 and its title any reference to "secession", because the term might be interpreted as including unlawful succession. Some members considered that the limited State practice did not support the exceptions to the non-succession rule included in draft article 7. In addition, the expressions "if particular circumstances so require" (in paragraphs 2 and 3), "an organ of a territorial unit" (in paragraph 2), "direct link", and "are assumed" (in paragraph 3) were deemed unclear by a number of members. In relation to paragraph 2,

the view was expressed that when an act of a continuing character was carried out by an organ of the predecessor State that became the organ of the successor State, no transfer of responsibility would occur, but two separate internationally wrongful acts could be established, each attributable to either the predecessor or the successor State. The view was also expressed that some criteria for the apportionment of rights and obligations after succession should be added to this and other draft articles, and that the concept of unjust enrichment might provide additional clarity in that regard. Other members considered that the rules applicable to unjust enrichment might not be pertinent in this context.

26. Several members expressed their support in relation to paragraph 4 of draft article 7, and a number of drafting proposals were made to clarify further the link between the attribution of conduct of an insurrectional or other movement and the consequent transfer of responsibility at the date of succession. Drafting suggestions were also made with a view to combining this draft article with draft articles 8 and/or draft article 9.

(iv) Draft article 8 — Newly independent States

27. A number of drafting suggestions were made in relation to draft article 8; the article received the support of several members of the Commission. Other members questioned whether it would still be necessary for the Commission to adopt a draft article devoted to "newly independent States", as the concept now seemed anachronistic. Other members, however, remarked that the General Assembly maintained a list of non-self-governing territories, and that cases of succession based on the principle of self-determination raised certain legal specificities that should not be overlooked. Several members proposed that the definition of "newly independent States" be included among those in draft article 2.

28. The view was expressed that, among the criteria to be considered under paragraph 2 of draft article 8, reference should be made to the possible direct link between an internationally wrongful act and the population, rather than just the territory, of the successor State. In relation to paragraph 3, some members considered that the concept of "insurrectional or other movement" would comprise "national liberation" movements, and it was thus possible to adopt the same language employed in paragraph 4 of draft article 7.

(v) Draft article 9 — Transfer of part of the territory of a State

29. In relation to draft article 9, several members remarked that their views concerning draft article 7 applied *mutatis mutandis*, including those concerning the limited State practice in support of the exceptions to the general rule of non-succession and the need to clarify the meaning of some of the terms employed. A number of drafting suggestions were made.

(vi) Draft article 10 — Uniting of States

30. Several members of the Commission remarked that draft articles 10 and 11, which concerned the situation where the predecessor State no longer existed, espoused a general presumption of succession to responsibility that was inconsistent with the general rule of non-succession in respect to State responsibility identified in draft article 6. In their view, there was not sufficient State practice in support of such a presumption of succession, which found support only in some academic writings and in the work of the Institute of International Law. The examples provided by the Special Rapporteur often concerned expropriation, which was not an internationally wrongful act *per se*. Some members underlined that, in the absence of consent, it was simply not possible to deduce any assumption of obligations by the successor State. Some members considered that the policy rationale underlying such a reversal of the general rule of non-succession may in fact lead to inequitable or unjust results. In addition, it was remarked that attaching legal consequences to the predecessor State remaining in existence, or otherwise, may lead to discriminatory results. Other members expressed support for draft articles 10 and 11, as they established the certainty of legal consequences for all internationally wrongful acts, and thus preserved the rights of injured parties.

31. A number of drafting suggestions were made in relation to draft article 10, some of which aimed at removing any reference to the distinction between types of unification of

States, given that the legal consequences in terms of succession to responsibility were deemed to be identical.

(vii) Draft article 11 — Dissolution of State

32. In addition to the observations that applied to both draft article 10 and draft article 11 mentioned above, a number of members of the Commission remarked that draft article 11 posed specific challenges and would require careful consideration in the light of the highly context-specific nature of dissolution of States.

33. Several members of the Commission considered that paragraph 1 of draft article 11 was unclear, especially in relation to the expression "subject to an agreement"; it was important to specify which parties would be involved in such an agreement, and whether the scope of the agreement would be the apportionment of responsibility among successors or the transfer of responsibility itself. In relation to paragraph 2, a number of members considered that the introduction of a duty to negotiate would not be appropriate, and that it was therefore important that the wording remained hortatory in nature. A number of drafting suggestions were made.

(c) Final form

34. In terms of the final form that the project should take, a number of members noted that some States had expressed their preference for a form other than draft articles, such as draft guidelines or conclusions, although other States had supported the form of draft articles. The view was expressed that the final form could be decided upon at a later stage. Some members remarked that it could be useful to consider the possibility of drafting model clauses to be used as a basis for negotiation of agreements on succession.

(d) Future programme of work

35. Members of the Commission generally agreed with the proposals by the Special Rapporteur concerning the future programme of work. The view was also expressed that the Special Rapporteur should consider further topics, such as the role of international organizations and the effect of non-recognition policies on issues of succession to responsibility.

3. Concluding remarks of the Special Rapporteur

36. In response to the debate, the Special Rapporteur expressed his gratitude for the many comments received and welcomed the prevailing sense of the debate, which had focused on how to best approach the topic in a balanced manner. In relation to the doubts that had been expressed as to the feasibility and suitability of the topic for codification, the Special Rapporteur reiterated his view that the topic was suitable for codification and progressive development, as it aimed to shed more light on the gaps left by the previous codification work of the Commission in the two fields of State responsibility and succession of States. The topic intended to explain the possible impact of succession of States on general rules of State responsibility, not at creating new rules on the succession of States. In his view, the fact that such issues had been deliberately left unaddressed during the Commission's work on State responsibility was an invitation rather than a hindrance to further consideration by the Commission. In the Special Rapporteur's view, nothing in the articles on responsibility of States for internationally wrongful acts suggested that the legal consequences of an internationally wrongful act simply disappeared because of State succession. The Special Rapporteur also indicated that he agreed that the Commission should consider changing the title of the topic to "State responsibility problems in cases of succession of States".

37. Concerning issues of methodology, and in particular comments made by members as to available practice, the Special Rapporteur underlined his intention to combine the progressive development of international law and its codification, an approach consistent with the mandate of the Commission. He indicated that there was little distinction between *lex ferenda* and policy considerations, and that State practice, including bilateral and multilateral treaties, was also influenced by policy considerations.

38. The Special Rapporteur also noted that a slow but growing trend of case law was emerging concerning succession to State responsibility, especially among regional human rights courts. He agreed that, in his report, he had greatly relied on academic writings, but considered that this was consistent with the role of writings as subsidiary means for the identification of rules of law. In addition, the Special Rapporteur stressed that the existence of early drafts on the topic by private codification bodies, and in particular the Institute of International Law, confirmed the relevance of the topic. He added that the Commission was, however, not bound by previous work undertaken by such bodies.

39. In relation the question of the identification of a general rule underlying the topic of State succession in relation to State responsibility, the Special Rapporteur agreed that such a general rule, or rules, was needed, together with exceptions applicable to individual categories of succession. For the purpose of creation of responsibility of a State (based on its own internationally wrongful act), non-succession was an absolute rule: both the act and the international obligation breached must refer only to the predecessor State. The legal consequences of a wrongful act, including circumstances precluding wrongfulness, the obligation of cessation, and possible countermeasures, would all in principle remain applicable to the predecessor State. The successor State would not become responsible on the basis of a wrongful act that it did not commit. Rather, it may be responsible for its own wrongful acts, in cases such as continuing breaches or attribution of conduct of insurrectional or other movements. In addition, some exceptions to the rule of non-succession existed in relation to certain consequences of an internationally wrongful act that did not disappear if the predecessor State no longer existed. These consequences continued to exist in a similar manner as territory, population, property or debts continued to exist in cases of succession. The exceptional grounds on which this was the case were certainly open to debate. Nonetheless, such circumstances did not determine a situation in which the successor State would become responsible, or be blamed, for acts that it did not commit; it would rather have to be commended for not leaving the injured States or injured persons without any reparation.

40. The Special Rapporteur pointed out that the basic distinction between cases where the predecessor State continued to exist and cases where it no longer existed was based on the description of real differences and was consistent with the recognized categories of succession, regardless of possible policy considerations. The specific rules and exceptions to be drafted in that regard had to be worded in such a way as to prevent unjust and inequitable results. With reference to the separation of the issues of succession to obligations arising from an internationally wrongful act of a predecessor State (considered in the second report) from the issues concerning the rights and claims arising from an internationally wrongful act injuring a predecessor State (to be considered in the third report), the Special Rapporteur noted that duplication could be avoided by eventually merging draft articles, as needed.

41. The Special Rapporteur also expressed his agreement with several other comments and proposals, including: the need to consider the link between an internationally wrongful act and the population of a successor State; the relevance of the consent of the injured State or person to any undertaking of responsibility by the successor State; the importance of agreements and unilateral declarations in matters of succession; and the need to include a provision expressly indicating the subsidiary character of the draft articles. He also agreed that a number of definitions would need to be added to draft article 2, and considered that a number of the drafting proposals concerning the structure and content of the draft articles should be upheld.

42. In the Special Rapporteur's view, the draft articles should also address subjects other than States as possible injured subjects. Such an approach was consistent with the first part of the articles on responsibility of States for internationally wrongful acts, which also applied to breaches of international obligations of States owed to other actors.

43. In relation to draft article 5, the Special Rapporteur reiterated that this proposal was consistent with the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983. He noted that it remained unclear whether modern international law fully regulated certain facts in relation to the creation of States. Draft

article 5 aimed at positively delineating the material scope of the draft articles in a manner consistent with the previous work of the Commission on succession. The draft article in no way sought to grant any privileges to unlawful successor States by exempting them from responsibility; rather, it concerned both the possible transfer of obligations and the transfer of rights arising from responsibility.

44. As to draft article 6, the Special Rapporteur was open to several of the suggestions received to improve its clarity. Concerning paragraph 4, the Special Rapporteur indicated that the reference to reparation did not exclude the relevance of other rules of State responsibility, which remained applicable to the predecessor State.

45. In relation to draft article 7, the Special Rapporteur agreed with a number of drafting suggestions, including expunging any reference to "secession" therefrom; in addition, the expression "if particular circumstances so require" needed further clarification or removal. As to draft article 8, the Special Rapporteur indicated that, in his view, all categories of succession previously considered by the Commission should be maintained, including the category of newly independent States. Regarding both draft article 7 and draft article 9, the Special Rapporteur indicated that the term "an organ of a territorial unit" referred to situations where such organs had a substantive degree of autonomy, such as in the case of federal States. Furthermore, he agreed with a number of drafting proposals, including those aimed at combining draft articles 7, 8 and 9 in a single provision. The Special Rapporteur also clarified that it was not the purpose of draft articles 7, 8 and 9 to create obligations entailing the automatic transfer of obligations to the successor State.

46. Regarding draft articles 10 and 11, the Special Rapporteur agreed with many of the comments made during the plenary debate. He underlined, however, that draft article 10 created a rebuttable presumption rather than a rule of automatic succession replacing that of non-succession in all circumstances. Furthermore, in his view, cases concerning unlawful expropriation could not be discounted as irrelevant. As to draft article 11, the Special Rapporteur underlined that it was as a general, introductory provision that would later be complemented by another draft article on the criteria and rules for the apportionment of obligations arising from the internationally wrongful act of a predecessor State that had ceased to exist.

47. In relation to the future programme of work, the Special Rapporteur took note of the agreement of some members with his proposed programme of work and agreed that the focus of the third report on transfer of rights or claims of an injured predecessor might need careful consideration to avoid duplication of work and that the role of international organizations could also be considered at a later stage together with other issues.